

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PUGET SOUND ENERGY,**

**Respondent.**

**Docket UE-220066/Docket UG-220067  
and UG-210918 (consolidated)**

**PUGET SOUND ENERGY’S MOTION  
TO STRIKE PORTIONS OF CENSE’S  
POST-HEARING BRIEF**

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**In the Matter of the Petition of**

**PUGET SOUND ENERGY**

**For an Order Authorizing Deferred  
Accounting Treatment for Puget Sound  
Energy’s Share of Costs Associated with  
the Tacoma LNG Facility**

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**I. INTRODUCTION**

- I.* Pursuant to WAC 480-07-375, Puget Sound Energy ("PSE") hereby submits this motion to strike portions of the Coalition of Eastside Neighbors for Sensible Energy ("CENSE") post-hearing brief submitted on October 31, 2022 ("CENSE Brief"). Specifically, PSE requests the Commission strike: paragraph 2 on page 1, paragraph 3 on pages 1-2, paragraph 7 on page 3, paragraph 18 on page 6, paragraph 22 on page 8, and paragraph 29 on pages 10-11. These

excerpts are improperly included in the brief, lack evidentiary support, and circumvent Commission rules and procedures.<sup>1</sup>

## II. BACKGROUND

2. CENSE was authorized to intervene in this proceeding for the narrow topic of the Energize Eastside project. Over the course of the proceeding, CENSE filed three pieces of testimony, submitted numerous exhibits into the record, and cross-examined PSE witness Dan'l Koch along with a witness from almost every party to the settlement.<sup>2</sup> The record for this case closed on October 4, 2022.<sup>3</sup>

3. CENSE's Brief was submitted on October 31, 2022 in accordance with the procedural schedule, but certain of its arguments were based on facts not in the evidentiary record or were otherwise unsupported:

1) Paragraph 2 on page 1, and paragraph 29 on pages 10-11: stating data that CENSE witness Mr. Lauckhart obtained from PSE through the Critical Energy Infrastructure Information ("CEII") process contained various flaws. The contention is based on an email Mr. Lauckhart apparently sent PSE's CEII review team on September 27th, none of which was included in the record or subject to cross examination. CENSE waited months

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<sup>1</sup> CENSE's Brief egregiously ignores the requirements in WAC 480-07-395, which requires all briefs to cite to "[p]ortions of the record relied on" in footnotes, include a table of authorities, and WAC 480-07-395(2) explicitly requires that parties "not represented by an attorney" to provide a verification of accuracy.

<sup>2</sup> See generally Dkts. UE-220066, UG-220067, and UG-210918.

<sup>3</sup> Dkts. UE-220066, UG-220067, and UG-210918 (Consolidated), Fourth Notice of Potential Ex Parte Communication, November 7, 2022 at 2 ("Furthermore, unless the Commission orders otherwise, the record in this proceeding closed on October 4, 2022, with the conclusion of the evidentiary hearing.").

to request CEII for this proceeding; the CEII was eventually provided after CENSE's excessively broad request for information was narrowed.

2) Paragraph 3 on pages 1-2: CENSE asserts PSE had a conflict of interest in paying for the Newcastle Synapse report and "had Synapse edit that report" without any evidence or citation in the record. This statement is unduly prejudicial and lacks foundation. PSE paid normal permitting fees associated with the City of Newcastle's permitting process and there were no interactions between PSE and Synapse, an independent third party hired by the City of Newcastle, where PSE "had" Synapse make any edits. This paragraph also falsely asserts the costs for Energize Eastside initially were \$43,000,000. CENSE provides no citation to the record, making it impossible to tell where these numbers originate, but the costs for the Energize Eastside were estimated to be between \$154 million - \$289 million.<sup>4</sup>

3) Paragraph 7 on page 3: CENSE asserts without basis that Energize Eastside is a project "being pursued for the economic benefit of PSE and its foreign owners."

4) Paragraph 18 on page 6: CENSE asserts without basis PSE did not conduct a stakeholder process and violated TPL-001.

5) Paragraph 22 on page 8: CENSE asserts without basis that there is a risk of explosion when co-locating the transmission line along a fuel pipeline. The Energize Eastside project was thoroughly reviewed in the Environmental Impact Statement ("EIS")

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<sup>4</sup> Koch, DRK-1T at 80.

proceedings, and PSE is actively working with Olympic Pipeline; CENSE's assertion is unsupported conjecture without any evidence.

4. CENSE's Brief further lacks citations to the record, making it difficult if not impossible to identify where CENSE's assertions originate, and does not demonstrate with reliable evidence that its assertions are backed by evidence.

### III. ARGUMENT

5. CENSE is attempting to evade established Commission procedure by supplementing the record based on information not in evidence or through argument that is otherwise unsupported by evidence. Supplemental information submitted in connection with a post-hearing brief is disfavored when a party improperly presents the information outside the procedural schedule and uses post-hearing briefs to supplement the record.<sup>5</sup> Furthermore, any evidentiary claims submitted after a hearing record has closed will not be considered by the Commission.<sup>6</sup> Finally, there is wide discretion to strike briefings, that use the brief as an opportunity to provide additional testimony, where parties cannot review the material or otherwise examine the assumptions.<sup>7</sup>

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<sup>5</sup> *In re Application E-18527 of United Parcel Service, Inc., for extension of authority under Common Carrier Permit No. 16295* Docket No. E-18527, Order M. V. No. 128995 (Jan. 6, 1984) (granting motion to strike a statistical compilation and analysis appended to post-hearing briefs as improperly presented after the close of the record, irrelevant, and because it was not subject to verification or cross-examination).

<sup>6</sup> *In Re Gte Nw., Inc.*, Docket No. U-89-3031-P, Second Supplemental Order (July 23, 1990) (striking a footnote and attachment related to bond yields changes filed after the hearing included in a post-hearing brief because "material submitted after a hearing record has closed will not be considered.").

<sup>7</sup> *WUTC v. Clarkston Gen. Water Supply, Inc.*, Docket No. U-84-46, (Apr. 14, 1985) (Striking update provided by the company as late filed exhibits); *Worldcom fka MFS Intelenet of Washington, Inc. v. GTE Northwest Incorporated*, Docket No. UT-980338, 3rd Suppl. Order (May 12, 1999) (striking report in reply brief as testimony, because the parties had no opportunity to review the material, consider or examine its assumptions, or otherwise had any meaningful opportunity to address it.); *Re Gte Nw., Inc.*, Docket No. U-89-3031-P, Second Supplemental Order (July 23, 1990).

**A. Paragraph 2 on Page 1, and Paragraph 29 on Pages 10-11 Should Be Stricken As Irrelevant and Not Based on Evidence in the Record.**

6. CENSE asserts that newly reviewed data demonstrates or confirms flaws in PSE’s modeling of the need for the Energize Eastside project,<sup>8</sup> notwithstanding the fact that the threshold need for Energize Eastside has been exceeded in four of the past five summers. This attempt to insert additional evidence after the record is closed should be rejected.
7. CENSE claims data its expert reviewed on September 27th demonstrates certain flaws exist in PSE’s planning studies, and that CENSE subsequently sent the “findings” in an email to PSE’s CEII review team.<sup>9</sup> CENSE has made similar claims in multiple proceedings based on information CENSE reviewed in 2015 from data obtained from the Western Electricity Coordinating Council,<sup>10</sup> and those claims were rejected. PSE rebutted those claims in prior proceedings and in this one by pointing out that they ignored the fact that PSE’s transmission planning processes are regularly reviewed and upheld.<sup>11</sup> CENSE attempts to bolster these rejected claims with new evidence not in the record, based on its belated request for additional information.
8. Notably, the “findings” CENSE identifies in its brief were never included in the record. CENSE admits the findings were only shared in an email sent to PSE’s CEII team, who are not part of the Energize Eastside project team, and they were not filed with the Commission as an

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<sup>8</sup> CENSE Brief, ¶¶ 2 and 29.

<sup>9</sup> *Id.*

<sup>10</sup> Lauckhart, RL-5 at 3 (Report by Mr. Lauckhart that studied only winter need and one contingency).

<sup>11</sup> Koch, DRK-26T at 9-13 (identifying the issues with Mr. Lauckhart’s reports, noting the FERC decision upholding PSE’s compliance with transmission planning requirements addressed in CENSE’s similarly “vague allegations” to FERC in 2015, and highlighting the third-party independent assessments showing need in summer).

exhibit.<sup>12</sup> CENSE’s attempt to rely on an email not in the evidentiary record that was sent to PSE’s CEII group, in which CENSE addresses its purported findings of flaws in PSE’s studies, is an additional reason to strike the claims in this paragraph.<sup>13</sup> Parties are prohibited from asserting new claims in the final brief based on information not in evidence because opposing parties need a “meaningful opportunity” to rebut or address those claims.<sup>14</sup> To submit evidence into the record, parties must file the information with the Commission before the record closes.<sup>15</sup> Instead, CENSE appears to have emailed “findings” to individuals within PSE and considers this a sufficient opportunity for PSE to review, and for CENSE’s claim to be included in its brief, even though the email is not included in the evidentiary record.<sup>16</sup> This circumvents the Commission’s process, prevents PSE from analyzing the findings, and otherwise prevents PSE from providing a response, cross examination, or otherwise challenging those assumptions. Paragraphs 2 and 29, which are based on the findings in the email, should be stricken from the record.

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<sup>12</sup> CENSE Brief at 1 (“Mr. Lauckhart emailed his findings to the PSE CEII team on Sept. 27, 2022.”).

<sup>13</sup> *In re Application E-18527 of United Parcel Service, Inc., for extension of authority under Common Carrier Permit No. 16295* Docket No. E-18527, Order M. V. No. 128995 (Jan. 6, 1984).

<sup>14</sup> *Worldcom fka MFS Intelenet of Washington, Inc. v. GTE Northwest Incorporated*, Docket No. UT-980338, 3rd Suppl. Order (May 12, 1999) (striking report in reply brief as testimony, because the parties had no opportunity to review the material, consider or examine its assumptions, or otherwise had any meaningful opportunity to address it.).

<sup>15</sup> Dkts. UE-220066, UG-220067, and UG-210918 (Consolidated), Fourth Notice of Potential Ex Parte Communication, November 7, 2022 at 2 (“Furthermore, unless the Commission orders otherwise, the record in this proceeding closed on October 4, 2022, with the conclusion of the evidentiary hearing.”).

<sup>16</sup> CENSE notes in its brief that it received the data on September 26, 2022, but CENSE had almost eight months to obtain this data. Instead CENSE waited about six months to reach out to PSE. PSE’s CEII team met with CENSE representatives to narrow down their broad request for information, clarify exactly what information CENSE was requesting because load files contain thousands of contingencies, and eventually was able to provide the data to CENSE. *See* Hr. Tr. at 405:9-406:1. CENSE made no attempt to include these findings specific to this data in the record.

**B. Paragraph 3 on Pages 1-2 Should Be Stricken Because It Is Irrelevant and Not Based on Evidence in the Record.**

9. CENSE asserts PSE had a conflict of interest in paying for the Newcastle report and “had Synapse edit that report” without any evidence or citation to the record.<sup>17</sup> CENSE has not provided any evidence supporting this statement; therefore, PSE has not had the opportunity to review the material relied upon by CENSE. By asserting this claim, without a citation to the record as required by WAC 480-07-395, or otherwise not providing any documentary evidence to support this claim even in testimony, PSE is denied the opportunity to challenge the assumptions and underlying evidence.<sup>18</sup>

10. Similarly, this paragraph also falsely asserts the costs for the Energize Eastside project initially were \$43,000,000.<sup>19</sup> Again, CENSE provides no citation to the record, nor is there any documentary evidence in the record demonstrating the Energize Eastside project was expected to cost \$43,000,000 or how working with the Energy Facility Site Evaluation Council would have allowed PSE to realize these costs savings. CENSE merely asserts this proposition and makes it impossible to tell from where these numbers originate or whether CENSE is cherry-picking a portion of the project rather than evaluating the costs of the project as a whole to make this

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<sup>17</sup> CENSE Brief at ¶ 3.

<sup>18</sup> *Worldcom fka MFS Intelenet of Washington, Inc. v. GTE Northwest Incorporated*, Docket No. UT-980338, 3rd Suppl. Order (May 12, 1999) (striking report in reply brief as testimony, because the parties had no opportunity to review the material, consider or examine its assumptions, or otherwise had any meaningful opportunity to address it.).

<sup>19</sup> CENSE Brief at ¶ 3.

claim.<sup>20</sup> The evidence in the record demonstrates that the initial estimate of costs for the Energize Eastside project was between \$154 million - \$289 million.<sup>21</sup>

11. The deadline to submit exhibits and testimony was on September 9, 2022, where the unsupported points CENSE attempts to make in the brief could have been incorporated into the record.<sup>22</sup> CENSE has not submitted documentary evidence supporting these assertions, which prevents PSE from challenging the claims asserted by CENSE. Therefore, including paragraph 3 in the record would be unduly prejudicial to PSE.

**C. Paragraph 7 on Page 3 Should Be Stricken Because It Is Irrelevant and Not Based on Evidence in the Record.**

12. The Energize Eastside project is an essential transmission project providing needed transmission capacity to a growing region in the Puget Sound region. CENSE asserts without basis that the Energize Eastside project is “being pursued for the economic benefit of PSE and its foreign owners.”<sup>23</sup> Paragraph 7 should be stricken from the record. First, this statement is irrelevant to whether the Commission should find the Energize Eastside project prudent. Second, this statement lacks evidentiary support, and allowing the statement in the record would be prejudicial to PSE by opining on the motives behind the Energize Eastside project, with no evidence to support such opinions. Moreover, motive is not a factor in prudence review, and there is no evidence in the record supporting these purported ulterior motives for construction of the Energize Eastside project.

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<sup>20</sup> For example, CENSE could be referring to the cost of a single substation replacement or part of the south segment, which would not address the deficiency.

<sup>21</sup> Koch, DRK-1T at 80.

<sup>22</sup> Dkts. UE-220066, UG-220067, and UG-210918 (Consolidated), Order 20/06 (Appendix A) (Aug. 22, 2022).

<sup>23</sup> CENSE Brief at ¶ 7.



**D. Paragraph 18 on Page 6 Should Be Stricken Because It Lacks Supporting Material Subject to Cross-Examination or Review.**

13. CENSE asserts without evidentiary basis that PSE did not conduct a stakeholder process and violated TPL-001.<sup>24</sup> CENSE provides no citation to evidence demonstrating a violation of TPL-001, and it is unclear upon what basis this assertion rests. Although not required for N-1-1 contingencies, PSE did hold stakeholder outreach meetings with impacted communities regarding the needs and solutions for the Eastside area. PSE answered this question from CENSE as to whether it held stakeholder meetings in its Response to CENSE Data Request No. 005.<sup>25</sup> CENSE is now claiming PSE violated TPL-001, without support from any evidence in the record. PSE has been denied the opportunity to respond in the evidentiary record to this unsupported claim or to otherwise evaluate the underlying documentation supporting this claim.<sup>26</sup>
14. This statement should be stricken because it is not a fact at issue in the proceeding, has no bearing on whether the Commission should find the Energize Eastside project prudent, and it improperly prejudices PSE by implying it somehow violated transmission planning standards without evidence in the record to support this assertion.

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<sup>24</sup> CENSE Brief at ¶ 18.

<sup>25</sup> PSE stated in response to CENSE Data Request No. 005 that it held stakeholder outreach meetings in impacted communities and it also held stakeholder outreach meetings with jurisdictions that would be potentially impacted by rolling blackout plans in the event load-shedding was necessary.

<sup>26</sup> *Worldcom fka MFS Intelenet of Washington, Inc. v. GTE Northwest Incorporated*, Docket No. UT-980338, 3rd Suppl. Order (May 12, 1999) (striking report in reply brief as testimony, because the parties had no opportunity to review the material, consider or examine its assumptions, or otherwise had any meaningful opportunity to address it.).

**E. Paragraph 22 on Page 8 Should Be Stricken Because It Lacks Supporting Material Subject to Cross-Examination or Review**

15. CENSE asserts without basis that there is a risk of explosion when co-locating the Energize Eastside transmission line along a fuel pipeline.<sup>27</sup> CENSE points to no expert evidence in the record supporting this claim and provides no underlying data or documentation in this proceeding for which PSE would have been able to analyze or otherwise evaluate. CENSE cites to an attachment to the Prefiled Testimony of Richard Lauckhart, which provides no support for CENSE's claim that the Energize Eastside project presents a risk of pipeline explosions.<sup>28</sup>
16. This statement should be stricken because it is not supported by any evidence in the record, and it improperly prejudices PSE by implying the Energize Eastside project is somehow a danger to public safety despite the completion of an EIS and other permitting requirements.<sup>29</sup>

**IV. CONCLUSION**

17. CENSE's Brief makes assertions that are not supported in the record, are irrelevant to the underlying prudence determination for Energize Eastside, and are otherwise procedurally improper. PSE requests the Commission strike: paragraph 2 on page 1, paragraph 3 on pages 1-2, paragraph 7 on page 3, paragraph 18 on page 6, paragraph 22 on page 8, and paragraph 29 on pages 10-11.

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<sup>27</sup> CENSE Brief at ¶ 22.

<sup>28</sup> Lauckhart, RL-1T at 20 (citing to an article about the 1999 Olympic Pipeline explosion that identifies the cause of the explosion as tied to a pressure release valve failure.).

<sup>29</sup> See Hr. Tr. at 403:4-18 (Mr. Koch noting environmental review has been extensive, including a two-phased EIS, and subject to Permit requirements.)

RESPECTFULLY SUBMITTED this 8th day of November, 2022.

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